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Mary L. Johnson, General Counsel
National Mediation Board
1301 K Street, N.W.
Suite 250 East
Washington, DC 20572

Re: AMFA's Public Comments on the Proposed Changes to the National Mediation Board's Representation Manual

Dear Ms. Johnson:

Pursuant to the National Mediation Board's ("Board") Notice, dated July 15, 2008, inviting the submission of written comments from interested parties regarding certain proposed changes to the Board's Representational Manual, and the Notice, dated July 31, 2008, the Clarification of the Board's Proposed Revisions to its Representation Manual, the Aircraft Mechanics Fraternal Association ("AMFA") submits the following comments for the Board's consideration. AMFA's comments herein directed toward some of the proposed changes to the Board's Manual essentially recommend that the Board not fix that which is not broken.

Proposed Change to Manual Section 8.2 on Challenges and Objections

The proposed change to Section 8.2 of the Board's existing Manual, first proposes to replace the sentence -- "All challenges or objections must be supported by substantive evidence." – with the following sentence: "All challenges or objections will be resolved by substantive evidence." The proposed language does not significantly improve upon the existing clear and precise meaning of the sentence and therefore the proposed language should be rejected.

Next, the proposed change to Section 8.2 adds new language for insertion immediately thereafter as follows:

"Examples of substantive evidence include, but are not limited to: official carrier records; payroll statements; human resources forms; and sworn declarations attesting to specific facts. When considering eligibility of employees and personnel matters, **substantial weight will be given to the carrier's evidence** as it maintains the official records relating to benefits, salary, payroll records, and job descriptions. . . ." (Emphasis supplied).

AMFA objects to the proposed amendment that would provide that "[w]hen considering eligibility of employees and personnel matters, **substantial weight will be given to the carrier's evidence** as it maintains the official records relating to benefits, salary, payroll records, and job descriptions" (Emphasis supplied). The proposed amendment would undermine the ability of the Investigators and the Board to render impartial and objective decisions by codifying a preference for the evidence of the employer-party in the context of an adversarial proceeding. The proposed change will foster the public perception that the Board is biased in favor of the carrier and subvert employee confidence in the right to organize under the Railway Labor Act. According to the carrier's "substantive evidence" more weight than any other participant's "substantive evidence" before that evidence has been evaluated would introduce bias into the Board's Manual and should not be tolerated. America's institutions and the legal precepts upon which they are founded reflect the public's right to fairness and parity when it comes to consideration by a decision-maker of a participant's substantive evidence. The proposed change undermines these fundamental public interests and expectations.

AMFA, therefore, recommends that the Board reject adoption of the proposed changes for Section 8.2 to the Board's Manual.

Proposed Change to Manual Section 9.205 on Leave of Absence

Initially it is worth noting that the Notice of the proposed change for this section to the Board's Manual erroneously underlines and bolds two words, namely, "are eligible," that are not proposed changes but that are words at the end of the existing first sentence of the section as follows:

Employees on authorized leaves of absence including military leave, leave for labor organization activities, or authorized sick leave **are eligible.** (Emphasis supplied).

The proposed change seeks to add the following additional words to the first sentence after the words "are eligible":

"if they retain an employee-employer relationship and have a reasonable expectation of returning to work. . . ."

The additional language mirrors language contained in the Manual Section 9.204 pertaining to furloughed employees. Adding this proposed language to Section 9.205 for employees on authorized leaves of absence can only lead to ambiguity in a category of eligible voters where no such ambiguity currently exists.

AMFA, therefore, recommends that the Board reject adoption of the proposed changes for Section 9.205 to the Board's Manual. The Board should refrain from encouraging challenging to devoting rights of those who are sick, engaged in union activity or serving their country.

Proposed Change to Manual Section 13.304-2 on Void Votes

The proposed change to Section 13.304-2 of the Board's existing Manual is to add an additional fifth category of votes that will not be counted as follows:

> (5) votes for a current political candidate or other widely known individual, where it is clear that the voter does not intend for that individual to represent the craft or class for purposes of collective bargaining under the RLA.

The fifth proposed exclusionary category should be rejected. The language as proposed is not clear as are the other existing categories of void votes in Sections 13.304-2(1) through (4), inclusive. Such exclusionary categories should be drafted as bright line rules that preclude subjectivity and bias. The fifth exclusionary category, as worded, does not satisfy this criterion. The new language invites the Board and its Investigators to engage in a subjective mind-reading exercise for the purpose of nullifying the affected employee's voting rights. A voter who has taken the time to vote for an individual (that is not a carrier official) to represent their craft or class manifests an intention for representation. Adopting the proposed 13.304-2(5) will introduce unnecessary confusion to the bright line rules that currently exists for void votes and undercut the employees' right to organize.

AMFA, therefore, recommends that the Board reject adopting the proposed Section 13.304-2(5) to the Board's Manual.

Proposed Additional New Section 19.701

Changes to the merger procedures of the Board's Manual take on a new significance now that airline consolidations are being contemplated by carriers. All changes that may be adopted should maintain the perception of an objective and unbiased Board.

First, AMFA comments that incongruously neither the July 15th Notice nor the July 31st Notice contains a heading for the new proposed Section 19.701. This is quite peculiar since there is no other stand alone provision in the Manual without a descriptive heading.

Second, and most importantly, AMFA comments and objects to specific wording in the proposed Section 19.701 contained in both Notices, which in relevant part, states as follows:

"Where there is a certified representative on one of the affected carriers but no certified representative on the other(s), the Board will exercise its discretion and extend the certification only where there is more than **a substantial majority, as determined by the Board**. . . ." (Emphasis supplied).

While the rationale for this wording of proposed Section 19.701 appears to be Board discretion in such circumstances when the certified representative on one carrier enjoys definitive majority support when there is no certified representative on the other carrier(s), under the proposed wording the Board may be perceived to be exercising its discretion unfairly because of the absence of a bright line rule, which explicitly defines "a substantial majority." Absent such an explicit definition that interested parties are afforded the opportunity to comment upon, the Board should reject the proposed additional new Section 19.701 in its entirety. There is no good reason why "a substantial majority" should ever vary mathematically from one merger situation to another. In this context, the emphasis on discretion gives every impression of appearance of arbitrariness.

In addition, the Board's exercise of discretion under Section 19.701 takes on additional importance when there is a sufficient showing of interest from a non-incumbent union under Section 19.602 of the Manual's merger procedures. Under this circumstance, the language of Section 19.701 does not prevent Board discretion to extend certification to the incumbent union when there is "a substantial majority" despite the obvious conflict with the Manual's existing procedure under Section 19.602. Further, such an exercise of discretion undermines the Board's mandated neutrality in the employees' choice of representative under the Railway Labor Act. The proposed Section 19.701 would authorize the discriminatory application of the Board's discretion to prematurely prevent a representation dispute when there is a non-incumbent union with a sufficient showing of interest under the Manual's existing merger procedure, i.e. Section 19.602.

Accordingly, prudence dictates and AMFA, therefore, recommends that the Board reject adopting as part of its Manual the proposed Section 19.701 in its entirety.

Further, AMFA endorses the comments of Senator Edward M. Kennedy and Congressmen James L. Oberstar and George Miller contained in their mutual letter to the Board, dated August 8, 2008.

Sincerely,

George Diamantopoulos

cc: Mr. Steve MacFarlane, AMFA's National Director
Mr. Louie Key, AMFA's Assistant National Director
The Honorable Edward M. Kennedy
The Honorable James L. Oberstar
The Honorable George Miller